

AMENDED IN SENATE MAY 1, 2006

**SENATE BILL**

**No. 1851**

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**Introduced by Committee on Health (Senators Ortiz (Chair),  
Aanestad, Alquist, Chesbro, Cox, Figueroa, Kuehl, Maldonado,  
and Runner)**

March 27, 2006

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An act to amend Sections 109275, 109277, and 109280 of the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

SB 1851, as amended, Committee on Health. Cancer: informed consent.

Existing law requires physicians and surgeons to inform patients being treated for breast cancer about alternative efficacious treatments. Violation of these requirements constitutes unprofessional conduct and is a crime. Existing law requires the State Department of Health Services to develop a summary of alternative efficacious methods of treatment for breast cancer and requires the Medical Board of California to provide the summary to physicians and surgeons.

Existing law requires every health facility, clinic, and physician and surgeon's office to post a prescribed notice where outpatient breast cancer screening or biopsy is performed, informing patients that the physician and surgeon has a duty to provide a copy of the department's summary to the patient prior to performance of a biopsy. Existing law further requires the physician and surgeon to note on the patient's written record that the summary was so provided.

This bill would, instead, require the physician and surgeon, *upon a diagnosis of breast cancer*, to provide the summary ~~prior to obtaining consent for any breast cancer treatment, other than screening or~~

biopsy. It would permit the physician to choose to provide the summary prior to performance of a screening or biopsy and would require conforming changes to the notice. The bill would require the department and the Medical Board of California to each post the summary on its Internet Web site.

Existing law requires the department to approve a standardized written summary containing specified information about prostate cancer treatment options, and requires the Medical Board of California to provide the summary to physicians and surgeons.

This bill would require the department and the Medical Board of California to each post the summary on its Internet Web site for public use.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 109275 of the Health and Safety Code  
2 is amended to read:

3 109275. (a) ~~Physicians and surgeons shall inform patients~~  
4 ~~being treated for any form of breast cancer of the alternative~~  
5 ~~efficacious methods of treatment by providing the patient with~~  
6 ~~the written summary described in subdivision (c). Upon a~~  
7 ~~diagnosis of breast cancer, the physician and surgeon, meaning~~  
8 ~~the primary provider who initially referred the patient for the~~  
9 ~~screening or biopsy or, if different, the provider who has made~~  
10 ~~the diagnosis of breast cancer and initially consulted with the~~  
11 ~~patient about treatment, shall give the patient the written~~  
12 ~~summary described in subdivision (c) and required by this~~  
13 ~~section and shall note on the patient's chart that he or she has~~  
14 ~~given the patient the written summary. The physician and~~  
15 ~~surgeon may choose to provide the summary prior to the~~  
16 ~~performance of a screening or biopsy for breast cancer upon a~~  
17 ~~patient's request or at the discretion of the physician and~~  
18 ~~surgeon in appropriate cases, including, but not limited to,~~  
19 ~~instances when a patient has demonstrated risk factors, has a~~  
20 ~~family history of breast cancer, or is otherwise susceptible.~~

21 (b) The failure of a physician and surgeon to inform a patient,  
22 by means of a standardized written summary developed by the  
23 department on the recommendation of the Cancer Advisory

1 Council in accordance with subdivision (c), in—~~layman's~~  
2 *layperson's* language and in a language understood by the  
3 patient, of alternative efficacious methods of treatment that may  
4 be medically viable, including surgical, radiological, or  
5 chemotherapeutic treatments or combinations thereof, when the  
6 patient is being treated for any form of breast cancer, constitutes  
7 unprofessional conduct within the meaning of Chapter 5  
8 (commencing with Section 2000) of Division 2 of the Business  
9 and Professions Code.

10 (c) (1) A standardized written summary in—~~layman's~~  
11 *layperson's* language and in a language understood by the patient  
12 shall be developed by the department with the recommendations  
13 of the Cancer Advisory Council, and shall be printed and made  
14 available by the Medical Board of California to physicians and  
15 surgeons, for the purposes of informing the patient of the  
16 advantages, disadvantages, risks, and descriptions of the  
17 procedures with regard to medically viable and efficacious  
18 alternative methods of treatment for breast cancer as required by  
19 subdivision (a).

20 (2) Commencing no later than January 1, 1995, and every  
21 three years thereafter, the department shall review the written  
22 summary and shall revise the written summary if the department  
23 determines that new or revised information should be included in  
24 the written summary, and shall provide a copy of the revised  
25 summary to the Medical Board of California.

26 (3) At the next revision of the standardized written summary  
27 required by this section, the department shall incorporate all of  
28 the following additional information:

29 (A) Information regarding methods of treatment for breast  
30 cancer that are in the investigational or clinical trial stage and are  
31 recognized for treatment by the Physician's Data Query of the  
32 National Cancer Institute.

33 (B) Available reference numbers, including, but not limited to,  
34 the "800" telephone numbers for the National Cancer Institute  
35 and the American Cancer Society, in order for breast cancer  
36 patients to obtain the most recent information.

37 (C) A discussion of breast reconstruction surgery, including,  
38 but not limited to, problems, benefits, and alternatives.

39 (D) Statistics on the incidence of breast cancer.

1 ~~(d) Prior to obtaining consent for any treatment, other than~~  
2 ~~screening or biopsy, the physician and surgeon shall note on the~~  
3 ~~patient's chart that he or she has given the patient the written~~  
4 ~~summary required by this section. The physician and surgeon~~  
5 ~~may choose to provide the summary prior to the performance of~~  
6 ~~a screening or biopsy for breast cancer.~~

7 (e)

8 (d) The Medical Board of California shall establish a  
9 distribution system for the breast cancer treatment alternatives  
10 written summary, and shall provide a link to its Internet Web site  
11 that may be accessed by consumers interested in viewing and  
12 obtaining a copy of the summary.

13 (f)

14 (e) The department and the Medical Board of California shall  
15 each post the summary on its Internet Web site.

16 SEC. 2. Section 109277 of the Health and Safety Code is  
17 amended to read:

18 109277. (a) Every person or entity who owns or operates a  
19 health facility or a clinic, or who is licensed as a physician and  
20 surgeon and rents or owns the premises where his or her practice  
21 is located, shall cause a sign or notice to be posted where a  
22 physician and surgeon performs breast cancer screening or  
23 biopsy as an outpatient service, or in a reasonably proximate area  
24 to where breast cancer screening or biopsy is performed. A sign  
25 or notice posted at the patient registration area of the health  
26 facility, clinic, or physician and surgeon's office shall constitute  
27 compliance with this section.

28 (b) The sign or notice shall read as follows:

29  
30 "BE INFORMED"

31  
32  
33 ~~"Prior to obtaining consent for any breast cancer treatment,~~  
34 ~~other than screening or biopsy—~~*"Upon a diagnosis of breast*  
35 *cancer,* your physician and surgeon is required to provide you  
36 a written summary of alternative efficacious methods of  
37 treatment, pursuant to Section 109275 of the California Health  
38 and Safety Code. Your physician and surgeon may choose to  
39 provide the summary prior to the performance of a screening or

1 biopsy for breast cancer *at your request or at the physician and*  
2 *surgeon's discretion, when appropriate."*

3 "The information about methods of treatment was developed  
4 by the State Department of Health Services to inform patients  
5 of the advantages, disadvantages, risks, and descriptions of  
6 procedures."  
7

8 (c) The sign shall be not less than eight and one-half inches by  
9 11 inches and shall be conspicuously displayed so as to be  
10 readable. The words "BE INFORMED" shall not be less than  
11 one-half inch in height and shall be centered on a single line with  
12 no other text. The message on the sign shall appear in English,  
13 Spanish, and Chinese.

14 SEC. 3. Section 109280 of the Health and Safety Code is  
15 amended to read:

16 109280. (a) A standardized written summary in ~~layman's~~  
17 *layperson's* language and in a language understood by patients  
18 shall be approved by the department. The department may  
19 approve the use of an existing publication from a recognized  
20 cancer authority as the written summary. Commencing on  
21 January 1, 2003, and every three years thereafter, the department  
22 shall review its approval of the use of an existing publication  
23 from a recognized cancer authority as the written summary to  
24 ensure that the approved written summary comprises timely,  
25 new, and revised information regarding prostate cancer treatment  
26 options as the department determines is necessary. The written  
27 summary shall be printed or made available by the Medical  
28 Board of California to physicians and surgeons, concerning the  
29 advantages, disadvantages, risks, and descriptions, of procedures  
30 with regard to medically viable and efficacious alternative  
31 methods of treatment of prostate cancer. Physicians and surgeons  
32 are urged to make the summary available to patients when  
33 appropriate.

34 (b) The department and the Medical Board of California shall  
35 each post this summary on its Internet Web site for public use.

36 (c) If the department updates this summary, it shall send the  
37 updated summary to the Medical Board of California and both

- 1 the department and the Medical Board of California shall each
- 2 post this updated summary on its Internet Web site.

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